

CS/SB 928 also requires state agencies to prepare a statement of estimated regulatory cost if their proposed rules will impact small business, and creates a review process utilizing the Office of Program Policy Analysis & Government Accountability (OPPAGA) when an agency does not accept rule-language alternatives offered by the council.

CS/SB 928 creates ss. 11.9006 and 11.9007, of the Florida Statutes, and amends ss. 11.908, 11.919, 120.54, and 120.74.

II. Present Situation:

Small Businesses in Florida

Information compiled by the Small Business Administration (SBA) in 2004 and 2005 indicates that there are 1,942,200 small businesses in Florida.¹ Of that number, 393,830 businesses have 1 to 99 employees, for a total non-farm employment of 2.3 million persons.² The vast majority of small businesses in Florida – nearly 1.5 million in 2005 – are “non-employer firms,” which have no paid employees but they can and do contract out for work-related tasks.³

According to Florida’s Agency for Workforce Innovation, in 2005 Florida had 568,420 employer businesses, with a total employment of 7.6 million people.⁴ So, comparing these statistics with those from the SBA, 69 percent of Florida’s employer businesses have fewer than 100 employees and account for 30 percent of the state’s non-farm workers.

Small businesses continue to generate a greater percentage and greater numbers of jobs compared with job losses.⁵ From 2003-2004, employer firms with fewer than 100 workers added a net 191,000 jobs to Florida’s economy, meaning 27 percent more jobs were created by small businesses than were lost. During that same period of time, employer businesses with at least 500 workers created a net 78,000 jobs, only an 11-percent increase in jobs created versus jobs lost.

Existing Regulatory Flexibility Legislation & Administrative Procedures Act (APA)

The APA refers to the Commercial Development and Capital Improvements Act to define small business, which defines a “small business” as an entity employing 200 or fewer full-time employees and that, together with its affiliates, has a net worth of less than \$5 million or any firm based in this state which has an SBA 8(a) certification. As applicable to sole proprietorships, the

¹ Information in this section compiled from the U.S. Small Business Administration’s website. Specifically see <http://www.sba.gov/advo/research/profiles/07fl.pdf>. Last visited April 3, 2008

² Ibid.

³ According to the U.S. Small Business Administration Office of Advocacy, a non-employer firm is defined as one that has no paid employees, has annual business receipts of at least \$1,000 (at least \$1 in the construction trades), and is subject to federal income taxes. According to the U.S. Census Bureau, non-employers account for roughly 3 percent of business activity [in terms of sales or receipts], but nearly three-quarters of all businesses. Most non-employer businesses are very small, and many are not the primary source of income for their owners. More than half of these businesses are operated by sole-proprietors, working full-time without any paid employees.

⁴ State employment data for multiple years can be retrieved at <http://labormarketinfo.com/library/qcew.htm>. Last visited April 3, 2008.

⁵ Information in this section compiled from the U.S. Small Business Administration’s website. Specifically see <http://www.sba.gov/advo/research/profiles/07fl.pdf>. Last visited April 3, 2008.

\$5 million net worth requirement includes personal and business investments.⁶ This definition includes approximately 97 percent of firms in Florida, based on the 2002 U.S. Census. Under the APA, an agency may define “small business” to include businesses employing more than 100 persons if it finds that such definition is necessary to adapt a rule to the needs and problems of small businesses.⁷

Agencies’ current process to review small-business impacts

Before the adoption, amendment, or repeal of a rule, state agencies are encouraged but not required to consider the impact of the rule on small businesses and when practicable agencies should reduce the disproportionate impacts on small businesses.⁸ This provision does not include specific economic elements for the agency to consider, only that agencies may prepare a “statement of estimated regulatory costs” which must include an analysis of the impact on small business.⁹

When practicable, agencies must tier its rules to reduce disproportionate impacts on small business.¹⁰ Agencies must consider alternative methods for reducing the impact of the proposed rule on small business, such as establishing less-stringent compliance or reporting requirements; establishing less stringent schedules or deadlines; consolidating or simplifying the rule’s compliance or reporting requirements; establishing performance versus design standards; or exempting small businesses from the rule.¹¹

Florida law also requires agencies to identify and correct deficiencies; clarify and simplify its rules; delete obsolete or unnecessary rules; delete rules that are redundant of statutes; and seek to improve efficiency, reduce paperwork, or decrease costs.¹²

If an agency determines the proposed action will affect small businesses, it must send written notice to the small business ombudsman of the Office of Tourism, Trade, and Economic Development (OTTED).¹³ Agencies must adopt regulatory alternatives offered by the small business ombudsman which are feasible and consistent with the stated objective of the proposed rule and which would reduce the impact on small business.¹⁴ If the agency does not adopt the alternatives offered by the small business ombudsman, it must file a detailed written statement with the Joint Administrative Procedures Committee (JAPC) explaining the reason for failure to adopt such alternatives. JAPC also reviews each proposed agency rule.¹⁵

Judicial review process

A party who is adversely affected by final agency action is entitled to judicial review. Agency action is defined as “the whole or part of a rule or order, or the equivalent, or the denial of a

⁶ Section 288.703(1), F.S.

⁷ Section 120.54(3)(b)2.a, F.S.

⁸ Section 120.54(3)(b)1. & 2.a., F.S.

⁹ Section 120.541(2)(d), F.S.

¹⁰ Section 120.54(3)(b)2.a., F.S.

¹¹ Section 120.54(3)(b)2.a., F.S.

¹² Section 120.74, F.S.

¹³ Section 120.54(3)(b)2.b.I, F.S.

¹⁴ Section 120.54(3)(b)2.b.II, F.S.

¹⁵ Section 120.54(3)(b)2.b.III, F.S.

petition to adopt a rule or issue an order.”¹⁶ A preliminary, procedural, or intermediate order of the agency or of an administrative law judge is immediately reviewable if review of the final agency decision would not provide adequate remedy.¹⁷

The court must remand the case to the agency for further proceedings consistent with the court’s decision when it finds that the “correctness” of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure.¹⁸

Agency Sunset Review Process¹⁹

The Florida Government Accountability Act (act) establishes the agency sunset review process, which determines whether an agency should be abolished, continued, or reorganized. The act establishes a schedule of agency review beginning in 2008. An agency is up for sunset review every 10 years after its initial review. An agency subject to review by the Legislature shall be abolished on June 30 following the date of review, unless the Legislature continues the agency or advisory committee. However, an agency may not be abolished unless the Legislature finds, pursuant to law, that all state laws the agency had responsibility to implement or enforce have been repealed, revised, or reassigned to another remaining agency and that adequate provision has been made for the transfer to a successor agency of all duties and obligations relating to bonds, loans, promissory notes, lease-purchase agreements, installment sales contracts, certificates of participation, master equipment financing agreements, or any other form of indebtedness such that security therefor and the rights of bondholders or holders of other indebtedness are not impaired.

The Florida Small Business Development Center Network²⁰

Florida’s network is one of eight original SBDC pilot programs. Funded in 1976 by the U.S. Small Business Administration, the program links the state’s education system with community outreach to aid in the development and education of the state’s entrepreneurs and small-business community.

Over the years, Florida’s network has grown to more than 30 centers involving universities and community colleges, as well as other economic development partner organizations. Additional outreach is provided at approximately 60 “circuit rider” locations utilizing resource partners such as chambers of commerce, financial institutions, and major industries.

Since its inception, the network reports that it has counseled 324,882 small business owners and entrepreneurs with nearly 1.5 million hours of one-on-one counseling; conducted 27,912 business training events for 615,029 participants; and provided answers to nearly 2 million requests for information.

The network reports that in 2006, it helped its clients open 567 businesses; create or retain 11,526 jobs; win contract awards worth \$475 million; acquire \$136 million in capital for business formation and expansion; and earn sales growth worth \$139 million.

¹⁶ Section 120.52(2), F.S.

¹⁷ Section 120.68(1), F.S.

¹⁸ Section 120.68(7)(c), F.S.

¹⁹ Found in s.11.901-11.920, F.S., the “Florida Government Accountability Act.”

²⁰ More information available at <http://floridasbdc.org/>. Last visited April 3, 2008.

III. Effect of Proposed Changes:

Section 1 creates s. 11.9006, F.S., the “Small Business Regulatory Relief Act” and a nine-member Small Business Regulatory Advisory Council (council). It defines several terms used in the context of the new program.

The council will be comprised of current or former small-business owners representing different areas of the state. The Governor, the President of the Senate, and the Speaker of the House of Representatives will each appoint three members to the council. Other key administrative provisions related to the council are:

- Council members will serve 4-year terms, except that the initial appointments will be staggered in order to retain experience in the council’s early years.
- No member can serve more than three consecutive terms.
- The council members will serve without compensation.
- The council members will select a chairperson from among themselves.
- A process for removing and replacing council members is included.
- The council is established and administratively housed within the Florida Small Business Development Center Network, which shall provide staff support.

The council is authorized to:

- Provide recommendations to state agencies regarding proposed rules that may impact small business;
- Consider requests from small businesses to review an agency’s rules;
- Review rules to determine whether a rule places an unnecessary burden on small businesses; and
- Prepare and submitting an annual report to the Governor and legislative leaders describing its activities and recommendations.

One of the council’s key responsibilities is to participate in the agency sunset review process according to the sunset review schedule contained in s. 11.905, F.S. The council may review agencies’ rules to determine whether they should continue without change, or should be amended or repealed to reduce the impact on small business. The council’s recommendations must be “feasible and consistent with the stated objectives of the proposed rules.” If the council reviews an agency’s rules, the council must provide a report to the Joint Legislative Sunset Committee, the Governor, and the Legislature with recommendations and evaluations of these rules and agencies regarding regulatory fairness for small businesses. A component of the report is a rating system entitled the “Small Business Friendliness and Development Scorecard.”

The council specifically is precluded from interfering with administrative or judicial proceedings, or issuing subpoenas.

Section 2 creates s. 11.9007, F.S., which specifies the responsibilities of the new Office of Small Business Advocate, to be administratively housed within the network, and the office’s director, also to be known as the Small Business Advocate (advocate). The advocate shall be selected by the network’s director, and shall be either an employee, or under contract with, the network. Requirements for the advocate’s position are at least 5 years of experience in small business,

extensive knowledge of small-business issues and challenges, and actual experience in small-business advocacy and assistance.

The advocate's responsibilities include:

- Serving as staff for the council;
- Serving as the principal advocate in the state on behalf of small business, including participation in the consideration of legislation and administrative rules that affect small business;
- Working with public and private agencies and organizations to provide information to small business about state and local programs, including small business finance;
- Enlisting the cooperation and assistance of public and private agencies, businesses, and other organizations to disseminate information about programs beneficial to small businesses;
- Preparing and issuing a biennial report evaluating the efforts of state agencies that significantly regulate small businesses, assist minority and other small business enterprises, and make recommendations where appropriate to assist the development and strengthening of minority and other small business enterprises;
- Creating an annual process for small businesses to nominate agency regulations for amendment or repeal and to post those nominations online and update the status of agency action on those nominations twice yearly;
- Coordinating a statewide conference on small business;
- Coordinating annual public meetings to educate small businesses on disaster preparedness; and
- Submitting an annual report to the Governor and the Legislature on the activities and recommendations of the Office of the State Advocate.

State agencies are directed to furnish to the advocate any reports, documents, and other public information necessary to carry out the advocate's responsibilities.

Section 3 amends s. 11.908, F.S., to require the Joint Legislative Sunset Committee to consult with the council relating to the review of agencies by March 1 of each year, as it does with a number of other entities.

Section 4 amends s. 11.911, F.S., to require the council's report on agency rules to be included in recommendations by the Joint Legislative Sunset Committee where the Committee recommends continuation or reorganization of an agency.

Section 5 amends s. 11.919, F.S., to require state agencies to assist the council upon request.

Section 6 amends s. 120.54, F.S., to require agencies to prepare a statement of estimated regulatory cost of a proposed rule as provided in s. 120.541, F.S., if the rule will have an impact on small business.

Additionally, agencies will be required to provide written notification to the council of any proposed rule that will affect small businesses. Agencies also will be required to adopt any regulatory alternatives offered by the council which it finds are feasible and consistent with the

stated objectives of the proposed rule and which would reduce the impact on small businesses. However, if an agency decides not to adopt the council's alternatives, it must file a detailed written statement with JAPC and the council prior to rule adoption explaining its reasons. Finally, the section allows the council to request the President of the Senate and the Speaker of the House of Representatives to direct OPPAGA to review an agency's decision to reject the regulatory alternatives. The process is as follows:

- In conducting its review, OPPAGA is required to consider whether the rejected alternatives reduce the impact on small business while meeting the stated objectives of the proposed rule. OPPAGA has 60 days to conduct its review and provide its findings to JAPC.
- Next, JAPC reports OPPAGA's findings to the agency, and the agency must respond in writing to JAPC if OPPAGA found that the council's alternatives reduced the impact on small business while meeting the stated objectives of the proposed rule.
- If the agency still does not adopt the alternative rule language, it also must provide a detailed written statement to JAPC explaining its decision.

Section 7 amends s. 120.74, F.S., which requires agencies to review its rules periodically, but at least provide a formal review every 2 years. The new language directs agencies to determine whether their rules should be amended or repealed to reduce the impact on small business while meeting the stated objectives of the proposed rule. Also, the currently required annual report from agencies about their compliance with the periodic rule review must specifically address the economic impacts of their rules on small business.

Section 8 creates an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. But small-business owners may benefit from having a single advocate leading a coordinated effort to reduce regulation that may be financially detrimental to their operations.

C. Government Sector Impact:

Indeterminate. State agencies may incur additional costs in researching or modeling the fiscal impact their rules have on small businesses.

Creation of the council and the small business advocate will have no cost to the state.

VI. Technical Deficiencies:

The due dates of the council's and the advocate's various reports to the Governor and the Legislature are not specified.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce Committee on April 8, 2008:

The CS differs from the bill as filed in the following ways:

- Creates s. 11.9006, F.S., to be cited as the Small Business Regulatory Relief Act, and establishes a nine-member Small Business Regulatory Advisory Council (council), housed administratively within the Florida Small Business Development Centers Network (network).
- Specifies a number of duties for the council, but its primary responsibilities are to provide state agencies with input regarding proposed rules or programs that may adversely affect small business, and reviewing agency rules in conjunction with the agency sunset review process in s. 11.991, F.S. The council also must submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives about its activities and any recommendations, as well as a report to them and the Joint Legislative Sunset Committee on recommendations and evaluations of the impact on agency rules on small businesses. Included in that report will be an agency rating system entitled, "Small Business Friendliness and Development Scorecard."
- Creates s. 11.9007, F.S., the position of Small Business Advocate and the Office of Small Business Advocate within the network. The advocate will be an employee of, or under contract with, the network.
- Specifies a number of duties for the advocate, including: representing the views and interests of small businesses before the Legislature and state agencies;

receiving and responding to complaints from small businesses about agency rules or state laws that may adversely affect small businesses; and coordinating statewide meetings on small-business issues.

- Requires the advocate to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives about his or her activities and any recommendations, and a biennial report evaluating the efforts of agencies that regulate small businesses.
- Requires state agencies to prepare a statement of estimated regulatory cost if their proposed rules will impact small business, and creates a review process utilizing the Office of Program Policy Analysis & Government Accountability (OPPAGA) when an agency does not accept rule-language alternatives offered by the council.

B. Amendments:

None.